IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 2556 of 2004(D)

CC.347/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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PETITIONER: ACCUSED.

DR.SHOBHANA MOHANDAS,
W/O.DR.E.MOHANDAS, TUSHARA, MURUGA NAGAR,
PUNKUNNAM, THRISSUR 680 007.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: COMPLAINANT AND STATE.

1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI 682 031.

2. SUKUMARAN, S/O.PERUMPILLY GOPALAN,
CHERPPUMKUNNU DESOM, PULLOOR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY PUBLIC PROSECUTOR P.N.SUKUMARAN
ADV. SRI.C.HARIKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON 26/06/2007 PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.M.C. 2556 of 2004

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Dated: 26-06-2007

JUDGMENT

In this Petition filed under Section 482 Cr.P.C., the petitioner Dr. Sobhana Mohandas challenges the cognizance taken by the court below against the petitioner for an offence punishable under Sec. 304 A I.P.C. on the private complaint preferred by the 2nd respondent (Sukumaran) herein.

2. The case of the complainant can be summarised as follows:-

The complainant's wife (Vijaya) had a lump in her uterus. She had consulted the accused (Dr. Sobhana Mohandas) in the Elite Mission Hospital at Koorkancherry for the purpose of removal of the said lump. That was on 17-4-2001. After examining the complainant's wife the accused asked her to come on the next day, that is, on 18-4-2001 which was an operation day for the accused. The patient was told that the said lump could be surgically removed by employing the latest

method, namely, keyhole surgery. The accused had made her believe that it was a harmless surgery which would require only two or three days hospitalisation. Accordingly, on 17-4-2004 itself Vijaya was admitted in the said hospital as I.P. No. 1254. In the morning on 18-4-2001, the accused performed the operation on Vijaya. Even though surgery was over before lunch since Vijaya developed bleeding, she was again operated upon in the afternoon. Thereafter, she was in the intensive care unit till 20-4-2004. Within half-an-hour, she was re-admitted in the I.C.U. Vijaya developed vomiting, swelling of abdomen, pain etc. Her condition soon became serious and she was got examined by Dr. Premlal, Dr.Udayabhanu and Dr.Manikandan etc. of the very same hospital. On 21-4-2001, Vijaya was again subjected to a major operation by Dr. Premlal. But at about 11 p.m. on the next day, Vijaya breathed her last. Prior to the surgical operation Vijaya was very healthy, hail and hearty. During her first surgery on 18-4-2001 by the accused, her internal organs were injured resulting in internal bleeding. This was on account of the irresponsible, rash and negligent manner in which the surgery was performed by the accused. Vijaya

succumbed to the surgical injuries on account of the negligent conduct of the accused which was performed in a manner endangering human life. The accused had not taken the precautions and care both before and after the operation. There were laches on the part of the accused in getting expert medical consultation even after failure of the first surgery. If the accused had taken reasonable skill and care in performing the surgery, Vijaya would not have sustained fatal injuries on her internal organs resulting in her eventual death. The accused had confessed to the complainant and his relatives that she had committed a mistake and had assured them to do everything that was necessary. Dr. Premlal who had performed the last operation had told the complainant that death of Vijaya was on account of on the injuries sustained by her in the first operation. The act of the accused amounts to an offence punishable under Section 304 A I.P.C. The cause of action for the complaint was on 18-4-2001 when the accused performed the first surgery and continued till 25-4-2001 when Vijaya succumbed to the injuries within the limits of Nedupuzha Police Station. Eventhough the police had registered a case as Crime No. 103/2001 against the

accused on the complaint lodged by the complainant, the said case was closed by the police by yielding to the influence exerted by the accused and the complainant was given a copy of the refer report which, however, has not stated the reason for closing the case. Hence, the protest complaint.

3. J.F.C.M.-II, Thrissur, where the 2nd respondent-complainant filed the above protest complaint took cognizance of the offence punishable under Sec. 304 A I.P.C. and registered the case as C.C. 347/04. It is the said proceedings which are assailed and requested to be quashed in this petition filed by the accused Dr. Sobhana Mohandas.

4. I heard Sri.K.Ramakumar, the learned counsel appearing for the petitioner and Adv. Sri.C.Harikumar, the learned counsel appearing for the 2nd respondent /complainant.

5. Adv. Sri.C. Harikumar, the learned counsel appearing for the 2nd respondent/complainant made the following submissions before me in support of the cognizance:-

The accused Dr.Sobhana Mohandas is only a Gynecologist. She was not skilled to do laproscopic surgery. The decision of the Apex Court in *Jacob Mathew v. State of Punjab – 2005*

Crl.L.J. 3710 insists that *the doctor should be possessed of the requisite skill which he professes to be possessed.* The cause of death of Vijaya was on account of the first surgery conducted negligently by the accused on 18-4-2001. The postmortem certificate pertaining to Vijaya shows that she had five insized wounds on her body and the cause of her death was infection following abdominal surgery. The 161 statement of Dr. Premlal who conducted the final surgery shows that the cause of death was the injury sustained by Vijaya on the back of her uterine wall and the obstruction at the posterior end of the small intestine which was sticking on to the uterus wall and that the injury appeared to be one resembling an injury at the end of the large intestine and the same could be the result of prior surgery and that the cause of death could be due to the odema in the lungs. He has further stated that while coming to the hospital she had only a lump in her uterus. From the statement of Dr. Premlal it is reasonable to infer that Vijaya died as a result of the injuries sustained to her internal organs during the prior surgery which was admittedly performed by the accused.

6. I am afraid that I cannot agree with the above

submissions. There is nothing on record to show that the petitioner/accused who is a qualified gynecologist was not skilled to do laproscopic surgery. There is also no averment in the complaint that the petitioner was not possessed of the requisite skill to do keyhole surgery. There is nothing in the statement of Dr. Premlal to indicate that death was due to the negligence in the performance of the first surgery. In fact, the statements of witnesses questioned by the police during the inquest held on the dead body of Vijaya shows that there was some earlier medical consultation undertaken by Vijaya from Bombay. A reading of the postmortem certificate lends credence to the above conclusion reached by the police. Besides the multiple sutures at the rear aspect of the uterus and on the left fallopian tube, a healing area 4 x 5 cm. was seen on the posterior wall at the middle portion of the uterus. This could not have been the result of the surgery which was conducted just eight days ago. There is also nothing on record to show that soon after the first surgery, Vijaya was taken back to the operation theatre and subjected to another surgical operation on the same day as alleged in the complaint. Similarly, no scrap of

paper has been produced along with the complaint to show that the keyhole surgery conducted by the petitioner/accused was performed in a rash and negligent manner or without the professional expertise expected of her. No opinion from another surgeon experienced in the filed has also been produced along with the complaint. The statement of Dr. Premlal who performed the last surgery is not to the effect that it was the surgery performed by the petitioner accused which resulted in the patient developing the complications leading to her death. Merely because a patient dies pursuant to a surgical operation, negligence cannot be straightaway inferred. *(See Prabha G. Nair v. Mohanan - 2002 (1) KLT 733)*. For fixing liability, gross negligence and recklessness should not only be alleged but should also be proved. *(See Dr. Suresh Gupta v. Govt. of N.C.T. of Delhi & Another - 2004 (5) Supreme 604).* If there has been delay on the part of the doctor in attending to the patient, that by itself cannot constitute culpable negligence so as to justify a prosecution against the doctor. *(See Rakesh Ranjan Gupta v. State of U.P. and another - AIR 1999 SC 2115).* The case does not fall within the contours of the decisions in *State of Punjab v.*

Shivram and Others - 2005 (7) SCC 1, Gopinatha Pillai T.M. v. State of Kerala2000 Crl.L.J. 3682 and *Smt. Vinitha Ashok v. Lakshmi Hospital and Others - JT 2000 (8) SCC 142.*

7. It is unfortunate that Vijaya did not survive after the surgical operations conducted on her. But, without any supporting material, it will be unfair to presume that the surgical operation was conducted in a grossly negligent and reckless manner. The cognizance taken by the magistrate overlooking the aforesaid aspects of the matter cannot, therefore, be supported. The proceedings initiated before the J.F.C.M.-II, Thrissur as C.C. 347/2004 are accordingly quashed.

This Crl. M.C. is allowed as above.

V. Ramkumar, Judge.

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